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 CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT CALIF.
 LOS ANGELES

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Attorney for Plaintiff,
 VIVO PER LEI, INC.

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

VIVO PER LEI, INC., a Nevada
 corporation,

Plaintiff,

v.

GADI BRUCHIM, an individual,
 WILLIAM FIKHMAN, an individual,
 AMAZON.COM, INC., a Delaware
 Corporation, and Does 1-20, inclusive

Defendants.

Case No.: CV11-05169-^{GW}~~VDF~~(JCGx)

**FOURTH AMENDED
 COMPLAINT FOR:**

**COPYRIGHT INFRINGEMENT,
 TRADEMARK
 INFRINGEMENT, FALSE
 DESIGNATION OF ORIGIN
 AND FALSE
 REPRESENTATION,
 UNFAIR BUSINESS
 PRACTICES**

(Demand For Jury Trial)

Plaintiff VIVO PER LEI, INC., by and through its undersigned counsel,
 bring this Third Amended Complaint, pursuant to the Court's order of January
 24, 2012, against the above named Defendants, and in support thereof allege
 the following on information and belief:

JURISDICTION AND VENUE

1
2 1. This Court has subject matter jurisdiction over this matter
3 pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b), and 17 U.S.C. § 501, and
4 supplemental or pendant jurisdiction over any remaining claims under 28
5 U.S.C. § 1367 and 1338(b), as they are related to the federal claims, and arise
6 out of the same case and controversy as the federal claims in this action.

7 2. Personal jurisdiction and Venue are proper under 28 U.S.C. §
8 1391 (b) and (c) and 1400(b), because a substantial part of the events or
9 omissions giving rise to the claims occurred in this district and Defendants
10 reside in this district by virtue of being subject to personal jurisdiction in this
11 forum and judicial district by, among others, their repeated availment and
12 direction of their activity toward this district. Defendants directed their activity
13 at this forum and district, and purposefully injured Plaintiff, infringed its
14 trademarks and copyrights, knowing Plaintiff to be located in Northridge,
15 California.

PARTIES

16
17 3. Plaintiff, Vivo Per Lei, Inc. (“Vivo”) is a Nevada corporation with
18 its principle place of business located in Northridge, California and an online
19 place of business at <http://www.orogoldcosmetics.com> (the “Orogold
20 Website”).

21 4. Defendant Gadi Bruchim (“Bruchim”) is an individual residing on
22 information and belief in Aventura, Florida, with last known address of 3330
23 NE 190 Street, Apt. #912, Aventura, Florida. Bruchim operates an
24 Amazon.com storefront under the pseudonym “cosmetics4less”.

25 5. Defendant William Fikhman (“Fikhman”) is an individual
26 residing on information and belief in Tarzana, California, with last known
27 address of 18961 Ventura Boulevard, Tarzana, California. Fikhman operates
28 an Amazon.com storefront under the pseudonym “Super Duper Deals”.

1 11. Plaintiff owns all right, title and interest to certain images of the
2 Orogold Products, which constitute original and copyrightable subject matter
3 under the Copyright Act (the “Photographs”). *See Exhibit B* (incorporated by
4 reference). The Photographs are the subject of United States Copyright
5 Registration No. VA 1-789-570, a true and correct copy of which is attached
6 hereto as **Exhibit F** (incorporated by reference).

7 12. Plaintiff owns all right, title and interest to the content of the
8 Orogold website located at www.oringoldcosmetics.com (the “Content”). The
9 Orogold Website is comprised of images, including the Photographs, and the
10 Content, all of which constitute original and copyrightable subject matter under
11 the Copyright Act. *See Exhibit C* (incorporated by reference). A true and
12 correct copy of the United States Copyright Office certificate of registration for
13 the Orogold Content is attached hereto as **Exhibit E** (incorporated by
14 reference).

15 13. Plaintiff has widely used the Photographs and Content throughout
16 the United States and, upon information and belief, Defendants presently have
17 and previously have had unfettered access to the Photographs and Content,
18 including on and through the Orogold Website.

19 14. The Orogold Products are marketed and promoted through
20 substantial and ongoing business activities throughout the cosmetics industry,
21 the Orogold Website, and global advertising. Vivo distributes the Orogold
22 Products worldwide, through its own retail locations and website, and through
23 licensed third party distributors, resellers, retail stores, carts, and kiosk
24 vendors, including a significant presence in North America, Asia, Europe, the
25 Middle East and Africa, to name a few. As a result of widespread use and
26 recognition, the Marks have become assets of substantial value and goodwill as
27 indicators of the source for Vivo and the Orogold Products.
28

1 15. The Marks, and the goodwill of Plaintiff's business in connection
2 therewith, are in full force and effect and have never been abandoned.

3 16. Plaintiff has never authorized Defendants third party to use the
4 Photographs or the Content in any manner.

5 **Authorized Distribution of Orogold Products**

6 17. Vivo has strict distribution arrangements with its authorized
7 resellers and licensees ("Authorized Sellers"). Authorized Sellers that have
8 been authorized to sell online must adhere to, among other things, minimum
9 advertised price guidelines and limitations on use of the Marks. Authorized
10 Sellers do not have the authority to sublicense or delegate their rights, nor
11 resell to customers in a wholesale fashion unless expressly granted such
12 permission by Vivo. These restrictions prohibit sales by Authorized Sellers to
13 Internet retailers and mass merchandisers. When Internet retailers sell Orogold
14 Products outside of the authorized distribution channel, it damages Plaintiff's
15 goodwill and reduces Plaintiff's sales and interferes with Plaintiff's ability to
16 control the quality of the Orogold Products and protect the reputation of the
17 Marks.

18 **Defendants' Unauthorized Sales of Orogold Products**

19 18. Defendants seek to profit from Plaintiff's success. However,
20 Defendants know that the restrictions stated in Plaintiff's distribution
21 agreements and the contracts with Authorized Sellers make it impossible for
22 them to legitimately obtain Orogold Products from Plaintiff or Plaintiff's
23 distributors. Therefore, Defendants and their associates and co-conspirators
24 resort to deceptive, fraudulent, and illegal trade practices to obtain Orogold
25 Products. These practices include inducing Plaintiff's distributors and
26 Authorized Sellers to cheat Plaintiff by violating Plaintiff's distribution
27 agreements and contracts. Defendants encourage Plaintiff's distributors and
28

1 Authorized Sellers to cheat Plaintiff by encouraging them to order more
2 Orogold Products than the distributor or Authorized Seller needs.

3 19. The excess Orogold Products that are ordered are sold into
4 unauthorized distribution channels in violation of the distribution agreements
5 and sold to persons like Defendants. In such instances, the orders for excess
6 Orogold Products are made by distributors and Authorized Sellers with the
7 intent to defraud Plaintiff by misrepresenting the buyer's intention only to sell
8 the Orogold Products in line with their agreements. These types of frauds,
9 deceits and deception used to acquire the Orogold Products are referred to in
10 this Complaint as "Unauthorized Products". Such deception was found to be
11 criminal conduct in *United States v. Costanza*, 4 F.3d 658 (8th Circuit 1993),
12 where false statements by a diverter to a manufacturer about the intended use
13 or destination of goods purchased were held to support criminal convictions for
14 mail fraud, wire fraud and transportation of stolen goods. In *Australian Gold,*
15 *Inc. v. Hatfield*, 463 F.3d 228 (10th Cir. 2006) an award of more than \$5 million
16 in damages was affirmed against defendants who engaged in wrongful acts of
17 trademark infringement, interference with contract and false advertising in
18 connection with a scheme to divert salon only tanning products to sell on the
19 Internet.

20 **Defendants' Infringing Acts.**

21 20. At least as early as January of 2011, Vivo discovered that
22 Defendants were utilizing the Marks, Photographs and Content without
23 authorization for sales of Unauthorized Products on their Amazon.com
24 storefronts (the "Storefronts"), including said uses and sales of Unauthorized
25 Products sold and fulfilled directly by Amazon. See **Exhibit D** (incorporated
26 by reference).

27 21. At lease as early as January of 2011, Vivo discovered that
28 Defendants were utilizing the Marks in extensive advertising campaigns,

1 including prolific bidding on Vivo's Marks as keyword triggers for paid
2 advertisements and using the Marks as the title and/or within the text of paid
3 advertisements. Defendant's advertisements, without fail, appear as the top
4 sponsored link/paid advertisement on each of the largest search engines
5 available, namely Google, Yahoo, and Bing.

6 22. Vivo's counsel sent multiple cease and desist letters to Defendants
7 via Amazon's internal email system, via email and to Defendants' physical
8 addresses respectively where ascertainable, demanding cessation of the
9 unauthorized sales and any and all uses of the Marks, Photographs and Content
10 and warning of the severe consequences of, among other things, violations of
11 the Copyright Act and the Lanham Act.

12 23. Vivo's counsel has had myriad correspondence with Amazon
13 regarding the infringement detailed herein. At various points since their
14 discovery on Amazon and the Storefronts and after notification as detailed
15 above, some Photographs were removed by Amazon pursuant to its takedown
16 procedures. Some Photographs were never removed. The Content was never
17 removed.

18 24. Immediately following Amazon's removal of some Photographs,
19 Defendants Bruchim and Fikhman "reuploaded" the Photographs again to
20 Amazon.com and the same appeared in conjunction with Unauthorized
21 Products on both the Storefronts and on Defendant Amazon's own storefront
22 pages for sales of Unauthorized Products sold and directly fulfilled by
23 Amazon.

24 25. In February of 2011, Plaintiff had communication with Defendant
25 Fikhman, who indicated he was "waiting" for Plaintiff to have success in
26 removing Unauthorized Products from Amazon.com before he would
27 "cooperate". Defendant Fikhman has taken no action and continues the
28 infringement and unfair business practices alleged herein.

1 26. On April 29, 2011, Defendant Bruchim responded to Plaintiff's
2 counsel via email and represented that the Storefront would be closed.

3 27. Contrary to Defendant Bruchim's promise to close the Storefront,
4 he took no action and continues the infringement and unfair business practices
5 alleged herein.

6 28. Vivo's counsel sent further communications to Defendant
7 Bruchim to follow up on his promise to close the Storefront account and cease
8 the sale of the Unauthorized Products and infringement of Plaintiff's Marks,
9 Photographs and Content. To date, Defendant Bruchim has not responded and
10 the acts alleged herein continue.

11 29. Plaintiff has never licensed or otherwise authorized Defendants to
12 use the Marks in any manner.

13 30. Similarly, Plaintiff has never licensed or authorized Defendants to
14 copy, distribute, publish or otherwise use the Photographs or Content in in any
15 manner.

16 31. Defendants Bruchim and Fikhman have gone so far as to
17 immediately reload the infringing images upon their being removed by
18 Amazon after proper notification and acknowledgment of same, thereby
19 demonstrating an intentional, malicious and willful act of infringement coupled
20 with a reckless disregard for Plaintiff's intellectual property rights. Following
21 the takedown of certain images and the "reupload" by Defendants Bruchim and
22 Fikhman, Defendants used the Photographs again on Amazon's own storefront
23 pages and Defendant's Storefronts, respectively, in conjunction with the sales
24 of Unauthorized Products.

25 32. Defendants actions are willful. Defendant Bruchim acknowledged
26 the infringement by offering to takedown the Storefront. Despite Defendant
27 Amazon's requirement to takedown such infringements, their reactions are
28 sparse and unreliable. Further, Amazon's policy of partial compliance with

1 mandated takedown procedures, coupled with allowing the promulgation of
2 storefronts that demonstrate a willful and systematic patter of infringement,
3 tortious interference, and unfair business practices falls objectively and
4 demonstrably short of their responsibility.

5 33. Amazon's direct use of the Marks, Photographs, and Content
6 without authorization for its own sales of Unauthorized Products and direct
7 fulfillment of such orders speaks for itself.

8 34. The totality of Defendants' wrongful acts of deliberate and
9 calculated trademark infringement, copyright infringement, and unfair
10 competition demonstrate a systematic pattern of intellectual property theft and
11 willful disregard for Plaintiff's rights, clearly defining this case as exceptional.

12 35. Having had Plaintiff's good faith attempts to informally resolve
13 the dispute be ignored, Plaintiff determined further non-litigation attempts at
14 resolution would be inadequate and promptly filed this suit in order to obtain
15 damages as well as injunctive relief, including requiring the cessation of
16 Defendants' unauthorized sales of Orogold Products from, and unauthorized
17 use of the Marks, Photographs and Content on, the Storefront.

18 36. Plaintiff has no adequate remedy at law.

19 37. Plaintiff has suffered irreparable harm and damages as a result of
20 the acts of Defendants in an amount to be determined at trial.

21 **FIRST CAUSE OF ACTION**

22 **(Copyright Infringement)**

23 38. Plaintiff repeats and realleges each and every allegation of
24 paragraphs 1 through 37, above, as though fully set forth herein.

25 39. The Content and Photographs are all original works of authorship
26 and are copyrightable subject matter under the laws of the United States. The
27 Photographs were fixed in a tangible medium by development of the
28 photographs and/or by uploading to a hard drive and publishing the Orogold

1 Website bearing the Photographs. The Content was fixed in a tangible medium
2 by the publishing of the website containing the Content.

3 40. Plaintiff is the copyright owner of the Photographs and Content.

4 41. Defendants had access to the Photographs and Content through
5 the Orogold Website.

6 42. Defendants have violated Plaintiff's exclusive rights in and to the
7 Content and the Photographs by unlawfully using, reproducing, displaying and
8 distributing them on Amazon.com and the Storefront.

9 43. Plaintiff has not consented to or authorized the wrongful activities
10 of the Defendants as alleged herein.

11 44. As a direct and proximate result of the Defendants' infringements,
12 Plaintiff has suffered damages to its business and properties in an amount
13 unknown to Plaintiff but which Plaintiff alleges exceeds \$500,000. Plaintiff
14 believes and alleges it will continue to suffer such damages and that those
15 damages will increase every day. Plaintiff will amend its pleadings, at or
16 before trial, to conform to proof of the amount of such damages.

17 45. As a proximate result of the Defendants' wrongful conduct, the
18 Defendants have been unjustly enriched while Plaintiff has suffered damages
19 of a nature and in an amount according to proof at trial.

20 46. Plaintiff demands and is entitled to an accounting from each of the
21 Defendants, including all information necessary to permit Plaintiff to determine
22 the gains, profits and advantages that the Defendants have obtained by reason
23 of their wrongful conduct described herein.

24 47. Plaintiff has no adequate remedy at law. Monetary compensation
25 will not afford Plaintiff adequate relief. The Defendants' acts and omissions as
26 alleged herein will engender the need for a multiplicity of judicial proceedings
27 and will cause damages to Plaintiff that are difficult, if not impossible, to
28 measure. Unless the Defendants are preliminarily and permanently enjoined

1 from committing the unlawful acts alleged, including infringement of the
2 properties detailed herein, Plaintiff will continue to suffer irreparable harm.

3 48. Upon information and belief, the activities of the Defendants
4 complained of herein constitute willful and intentional infringement of the
5 Photographs and Content in violation of the Copyright Act. The willfulness of
6 Defendants' infringement is evidenced by the blatant unauthorized use,
7 duplication, publishing and promotion of the Photographs and Content, despite
8 numerous notifications and acknowledgments of said rights. Defendants'
9 activities are in total disregard of Plaintiff's rights.

10 49. Plaintiff is also entitled to attorney's fees under the Copyright Act.

11 **SECOND CAUSE OF ACTION**

12 **(Trademark Infringement – Lanham Act (15 U.S.C §§ 1114))**

13 50. Plaintiff repeats and realleges each and every allegation of
14 paragraphs 1 through 49, above, as though fully set forth herein.

15 51. Plaintiff is the owner of a federal trademark registration in the
16 OROGOLD trademark, Registration Nos. 3,826,410, 4,028,269 and 4,028,270.
17 Plaintiff also has common law rights in the Marks.

18 52. Defendants' extensive advertising campaigns utilizing the Marks
19 as the title and/or text of paid advertisements, keyword trigger bidding for paid
20 advertisement results, and unauthorized marketing, advertising, offering for
21 sale and sale of Unauthorized Products constitutes trademark infringement.

22 53. Plaintiff has not consented to or authorized the wrongful activities
23 of the Defendants alleged herein. The unauthorized use of the Marks in
24 extensive advertising, textual sponsored link bidding, keyword trigger bidding,
25 and the offering for sale and selling by Defendants of the Unauthorized
26 Products interferes with Plaintiff's ability to control the quality of the Orogold
27 Products and protect the reputation of the Marks.
28

1 54. As a direct and proximate result of the Defendants' infringement
2 of the Marks, Plaintiff has suffered damages to its business, goodwill, and
3 property in an amount unknown but which Plaintiff alleges exceeds \$500,000.
4 Plaintiff believes and alleges it will continue to suffer such damages and that
5 those damages will increase every day. Plaintiff will amend its pleadings, at or
6 before trial, to conform to proof of the amount of such damages.

7 55. As a proximate result of the Defendants' wrongful conduct, the
8 Defendants have been unjustly enriched while Plaintiff has suffered damages
9 of a nature and in an amount according to proof at trial.

10 56. Plaintiff demands and is entitled to an accounting from each of the
11 Defendants, including all information necessary to permit Plaintiff to determine
12 the gains, profits and advantages that the Defendants have obtained by reason
13 of their wrongful conduct described herein.

14 57. Plaintiff has no adequate remedy at law. Monetary compensation
15 will not afford Plaintiff adequate relief. The Defendants' acts and omissions as
16 alleged herein will engender the need for a multiplicity of judicial proceedings
17 and will cause damages to Plaintiff that are difficult, if not impossible, to
18 measure. Unless the Defendants are preliminarily and permanently enjoined
19 from committing the unlawful acts alleged, including infringement of the
20 properties detailed herein, Plaintiff will continue to suffer irreparable harm.
21 Injunctive relief is therefore appropriate pursuant to 15 U.S.C. § 1116 to
22 prevent the Defendants from engaging in any further violations of 15 U.S.C. §
23 1114.

24 58. Upon information and belief, the activities of the Defendants
25 complained of herein constitute willful and intentional infringement of the
26 Marks in violation of the Lanham Act, including, but not limited to, 15 U.S.C.
27 § 1114. The willfulness of Defendants' infringement is evidenced by the
28 blatant unauthorized use, duplication, publishing and promotion of Plaintiff's

1 Marks. Defendants' activities are in total disregard of Plaintiff's rights. As
2 such, Plaintiff is entitled to damages and remedies as provided by 15 U.S.C. §§
3 1116 and 1117.

4 **THIRD CAUSE OF ACTION**

5 **(False Designation of Origin and False Representation (15 U.S.C. §**
6 **1125(a))**

7 59. Plaintiff repeats and realleges each and every allegation of
8 paragraphs 1 through 58, above, as though fully set forth herein.

9 60. Defendants' use of the Marks as the title and/or text of paid
10 advertisements, keyword trigger bidding for paid advertisement results, and
11 unauthorized marketing, advertising, offering for sale and sale of Unauthorized
12 Products, constitutes a false designation of origin, false description and a false
13 representation that the products sold by Defendants originate from, or are
14 sponsored or authorized by Plaintiff.

15 61. Defendants' use of the Marks as the title and/or text of paid
16 advertisements, keyword trigger bidding for paid advertisement results, and
17 unauthorized marketing, advertising, offering for sale and sale of Unauthorized
18 Products constitute violations of § 43(a) of the Lanham Act, 15 U.S.C.
19 §1125(a).

20 62. As a direct and proximate result of the Defendants' violations of
21 15 U.S.C. §1125(a), Plaintiff has suffered damage to its business, goodwill,
22 and property in an amount unknown but which Plaintiff alleges exceeds
23 \$500,000. Plaintiff believes and alleges it will continue to suffer such damage
24 and that those damages will increase on a daily basis. Plaintiff will amend its
25 pleading, at or before trial, to conform to proof of the amount of such damages.
26 On information and belief, the Defendants' false designation of origin and false
27 representation was willful and intentional and Plaintiff is therefore entitled to
28 damages, attorney's fees and remedies as provided in 15 U.S.C. § 1117.

63. As a proximate result of the Defendants' wrongful conduct, the Defendants have been unjustly enriched while Plaintiff has suffered damages of a nature and in an amount according to proof at trial.

64. Plaintiff demands and is entitled to an accounting from each of the Defendants, including all information necessary to permit Plaintiff to determine the gains, profits and advantages that the Defendants have obtained by reason of their wrongful conduct described herein.

65. Plaintiff has no adequate remedy at law. Monetary compensation will not afford Plaintiff adequate relief. The Defendants' acts and omissions as alleged herein will engender the need for a multiplicity of judicial proceedings and will cause damages to Plaintiff that are difficult, if not impossible, to measure. Unless the Defendants are preliminarily and permanently enjoined from committing the unlawful acts alleged, including infringement of the properties detailed herein, Plaintiff will continue to suffer irreparable harm. Injunctive relief is therefore appropriate pursuant to 15 U.S.C. § 1116 to prevent the Defendants from engaging in any further violations of 15 U.S.C. § 1125(a).

FOURTH CAUSE OF ACTION

(Unfair Business Practices -- Cal. Bus. & Prof. Code §§ 17200 and 17500, *et seq.*)

66. Plaintiff repeats and realleges each and every allegation of paragraphs 1 through 65, above, as though fully set forth herein.

67. The wrongful conduct of the Defendants as alleged herein constitutes unfair and/or fraudulent business practices as defined by California Bus. & Prof. Code § 17200, *et seq.*

68. The unfair competition includes, but is not limited to, the marketing, advertising, transportation, delivery, distribution, offering for sale and sale of Unauthorized Products as detailed herein, the blatant theft of intellectual property including utilizing the Marks as the title and/or text of

1 paid advertisements, keyword trigger bidding for paid advertisement results,
2 and deceitful diversion of Plaintiff's products.

3 69. As a proximate result of the Defendants' violation of the Business
4 and Professions Code, the Defendants have been unjustly enriched. Plaintiff
5 demands and is entitled to an accounting from each of the Defendants,
6 including all information necessary to permit Plaintiff to determine the gains,
7 profits and advantages that the Defendants have obtained by reason of their
8 wrongful conduct described herein.

9 70. Plaintiff has no adequate remedy at law. Monetary compensation
10 will not afford Plaintiff adequate relief. The Defendants' acts and omissions as
11 alleged herein will engender the need for a multiplicity of judicial proceedings
12 and will cause damages to Plaintiff that are difficult, if not impossible, to
13 measure. Unless the Defendants are preliminarily and permanently enjoined
14 from committing the unlawful acts alleged herein, Plaintiff will continue to
15 suffer irreparable harm. Injunctive relief is therefore appropriate pursuant to
16 Bus. & Prof. Code Sections 17200 and 17500, *et seq.*, to prevent Defendants
17 from engaging in any further acts of unfair competition.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Vivo prays for an award as follows:

20 1. Preliminary and permanent injunctive relief against all
21 Defendants, and each of them and their subsidiaries, officers, agents, servants,
22 directors, employees, partners, representatives, assigns, successors, related
23 companies, attorneys and those persons in active concert or participation with
24 them or with any of the foregoing ("Related Entities") from doing any of the
25 following acts, either directly or indirectly, and from doing any act prefatory to
26 the prohibited acts:

27 a. Reproducing, copying, or infringing Plaintiff's Marks,
28 including using Plaintiff's Marks, or any marks or designations confusingly

1 similar thereto in connection with importing, manufacturing, promoting,
2 advertising, distributing, displaying, selling, or offering to sell any
3 unauthorized goods or services;

4 b. Causing likelihood of confusion, deception or mistake as to
5 the source, nature, or quality of the goods of Defendants;

6 c. Using any false designation of origin or false representation
7 concerning any of Plaintiff's products;

8 d. Using any logo, symbol, device, trade name, trademark, or
9 Marks that may be calculated to falsely represent that Defendants' goods are
10 sponsored by, authorized by, endorsed by, or in any way associated with
11 Plaintiff;

12 e. Falsely implying Plaintiff's endorsement of Defendants'
13 goods or engaging in any act or series of acts which, either alone or in
14 combination, constitute unfair methods of competition with Vivo and from
15 otherwise interfering with, or injuring the Marks or the goodwill associated
16 therewith;

17 f. Misrepresenting to anyone that they are authorized resellers
18 or distributors of Orogold Products, or any products of Plaintiff;

19 g. Copying, displaying, featuring, or using the Content,
20 Photographs, or any other copyrightable subject matter from or related to the
21 Orogold Products, or any works substantially similar thereto, or in any act in
22 violation of Plaintiff's copyrights;

23 h. Engaging in any act that is likely to dilute the distinctive
24 quality of the Marks and/or injures Vivo's business reputation;

25 i. Representing or implying that Defendants are sponsored by,
26 affiliated with, or endorsed or licensed by Plaintiff;

27 j. Marketing, advertising, transportation, delivery,
28 distribution, offering for sale and sale of Unauthorized Products; and

1 k. Knowingly assisting, inducing, aiding, or abetting any other
2 person or business entity in engaging in or performing any of the activities
3 referred to in paragraphs 2(a) to (j) above.

4 2. For an order directing Defendants, and each of them, to file with
5 this Court and serve on Plaintiff within 30 days after service of an injunction, a
6 report in writing and under oath, setting forth in detail the manner and form in
7 which Defendants have complied with the injunction;

8 3. For expedited discovery about Defendants' suppliers of
9 Unauthorized Products to assist in the investigation of the source and locations
10 of these illegal products;

11 4. For an award of money damages in the amount of at least
12 \$2,000,000 pursuant to the remedies as provided by 15 U.S.C. §§ 1116, 1117,
13 and 1125, and all other statutory and common law bases;

14 5. For recovery according to proof of all gains, profits, or advantages
15 derived by Defendants by their conduct to the fullest extent allowed by
16 common law, and statutes such as Bus. & Prof. Code §§ 17200 and 17500;

17 6. For punitive and exemplary damages;

18 7. For attorney's fees;

19 8. For costs; and

20 9. For such other relief as the Court deems just and proper.

21 Respectfully submitted,

22 LAW OFFICES OF JEREMY P. SMITH

23
24
25 Dated: February 3, 2012

By: 

26 Jeremy P. Smith, Esq.
27 *Attorney for Plaintiff,*
28 VIVO PER LEI, INC.

JURY DEMAND

Vivo demands a trial by jury of all issues triable by jury.

Respectfully submitted,

LAW OFFICES OF JEREMY P. SMITH

Dated: February 3, 2012

By: 

Jeremy P. Smith, Esq.
Attorney for Plaintiff,
VIVO PER LEI, INC.